

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PUUWAAWAA WATERWORKS, INC.)
For Review and Approval of Rate)
Increases; Revised Rate Schedules.)

DOCKET NO. 03-0369

ORDER NO. 21354

Filed Sept. 17, 2004
At 2 o'clock P.M.

for Brooke K. Kane
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
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STATE OF HAWAII

ATTEST: A True Copy
BROOKE K. KANE
Administrative Director
Public Utilities Commission
State of Hawaii

Brooke K. Kane

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ORDER

I.

Background

PUUWAAWAA WATERWORKS, INC. ("PWI") filed an APPLICATION FOR APPROVAL OF RATE INCREASE to increase its volumetric rate and change its rate schedule under Hawaii Revised Statutes ("HRS") § 269-16(b) on October 20, 2003, and amended it by filing an AMENDED APPLICATION FOR APPROVAL OF RATE INCREASE on January 26, 2004 ("Amended Application"). The commission held a public hearing on the matters of PWI's Amended Application on April 15, 2004, in Kailua-Kona, Hawaii, pursuant to HRS §§ 269-12(c) and 269-16(b) ("Public Hearing").

The only other party to this proceeding is the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") (collectively, PWI and the Consumer Advocate are referred to as "Parties").

On April 26, 2004, PWI filed an APPLICATION FOR APPROVAL OF TEMPORARY RATE INCREASE AND WAIVER OF PUBLIC HEARING ("Temporary Application") in this docket. Specifically, PWI

requests immediate approval of proposed temporary increase in rates ("Temporary Rate Increase Request") and a waiver of the public hearing requirement associated with the rate increase ("Waiver Request") (collectively, "Requests"). The Requests were made pursuant to HRS § 269-16 and Hawaii Administrative Rules ("HAR") §§ 6-61-41, 6-61-89, 6-61-92, and "such other rules and regulations as may govern herein."¹

On May 17, 2004, the Consumer Advocate filed the DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION ON PUUWAAWAA WATERWORKS, INC.'S APPLICATION FOR APPROVAL OF TEMPORARY RATE INCREASE AND WAIVER OF PUBLIC HEARING ("Statement of Position") opposing PWI's Requests.²

II.

Temporary Rate Increase Request

A.

PWI's Position

PWI requests immediate approval of temporary interim rates, pending commission resolution of its rate increase request set forth in its Amended Application. PWI proposes to increase its

¹See, Temporary Application at 1.

²The commission's determination regarding PWI's Temporary Rate Increase Request will be based on the Parties' filings since the Parties have waived any hearing with regards to this request. The record shows that PWI did not request a hearing on its Temporary Rate Increase Request. The Consumer Advocate, upon noting PWI's decision to not request a hearing on this matter, stated that it concurred with PWI that a hearing on this request is unnecessary. (See, Statement of Position at 1, footnote 1.) The record shows that PWI did not file an objection on this matter.

base volumetric rate by \$8.58 per thousand gallons above its present approved base volumetric rate of \$6.02 per thousand gallons ("Proposed Temporary Rates").³ PWI's Proposed Temporary Rates are the same rates requested in its Amended Application.⁴ PWI states that it meets the statutory requirements for the Proposed Temporary Rates. It further contends that "the discussion of probable entitlement in the [Amended] Application is equally applicable to this application for a temporary rate increase."⁵

Moreover, PWI states that it can demonstrate financial need for the Proposed Temporary Rates. It specifically states that under current commission approved rates⁶ it will experience an operating loss of \$147,900 during the test year ending December 31, 2004, and that its actual operating losses during the six (6) month period from March to August 2003 was approximately \$5,290. PWI contends that these losses demonstrate that the revenues generated by the Current Approved Rates are insufficient to cover

³PWI refers to its Proposed Temporary Rates as interim rates. Since PWI is requesting a temporary rate increase under HRS § 269-16(c) (see, Temporary Application at 2) we will refer to PWI's proposed rates as "Proposed Temporary Rates" as opposed to interim rates. We also note that while PWI quotes from HRS § 269-16(c), PWI appears to have inadvertently referenced HRS § 269-16(b) on page 2 of its Temporary Application.

⁴See, Temporary Application at 1.

⁵See, Temporary Application at 2.

⁶The commission approved PWI's current rates in Decision and Order No. 19980, filed on January 22, 2003, in Docket No. 00-0005 ("D&O No. 19980"). PWI's current authorized rates are made up of: (1) a base volumetric rate of \$6.02 per thousand gallons; (2) a fixed customer charge of \$37.83 per month for all customers; and (3) a power fluctuation factor charge ("Current Approved Rates"). See D&O No. 19980 at 9.

its ordinary operating expenses. It further states that the current approved rates "produced no revenues to pay taxes or to fund essential reserves for pump replacements and other capital requirements", and that PWI, consequently, filed for bankruptcy protection on May 7, 2003.⁷

PWI argues that the Proposed Temporary Rates are necessary to cover operating costs during the pendency of its Amended Application. PWI claims that it may be unable to continue service to its customers if its Temporary Rate Increase Request is denied. PWI contends that its Proposed Temporary Rate of \$14.60 per thousand gallons represents a total annual revenue increase of \$137,500, and a 103.54 per cent increase from the present base volumetric rate. Through its Proposed Temporary Rates, PWI states that it would have a net loss of \$19,200 for the test year ending December 31, 2004, as compared to a net loss of \$147,900 under the Current Approved Rates. Additionally, PWI contends that the Proposed Temporary Rates will enable it to fund a reserve for pump replacement and other capital improvements, which the Current Approved Rates do not allow for.

B.

Consumer Advocate's Position

The Consumer Advocate opposes commission approval of PWI's Temporary Rate Increase Request. It contends that the commission has established, through prior proceedings, that "a

⁷See, Temporary Application at 3.

temporary rate increase is a remedy to meet a 'sudden and urgent financial need.'"⁸ Furthermore, the Consumer Advocate also contends that the commission articulated "that there 'must be a showing of irreparable harm resulting to the utility from a distinctive and sudden deficiency in revenue which is not subject to recovery.'"⁹

Applying these standards, the Consumer Advocate contends that PWI failed to provide information demonstrating that it would be irreparably harmed without the proposed Temporary Rates and that PWI also failed to demonstrate that:

1. The Current Approved Rates are insufficient to recover a reasonable normalized level of operating costs;
2. There is a distinctive and sudden decline in revenues that will not be subject to recovery; and
3. PWI will not be able to obtain financing for an immediate investment in plant facilities necessary for the provision of water services.¹⁰

First, the Consumer Advocate contends that basic ratemaking principles should be applied in evaluating PWI's Temporary Rate Increase Request, which the commission applied when establishing PWI's Current Approved Rates. It contends that "ratemaking is not intended to allow PWI to recover the actual

⁸See, Statement of Position at 6.

⁹Id.

¹⁰Id.

costs that have, or are expected to[,] occur to provide the utility service."¹¹ The Consumer Advocate asserts that "[d]eviations between the actual costs and the normalized level upon which the rates are established become the utility company's shareholder's responsibility, until the utility is able to demonstrate that the costs should be recovered from ratepayers in a future rate proceeding."¹²

In particular, the Consumer Advocate contends that an increase in electricity expense is not indicative of a need for PWI's Proposed Temporary Rates since PWI should be able to timely recover the costs of electricity through its existing volumetric charge and the approved power adjustment factor. The Consumer Advocate contends that PWI failed to demonstrate the reasonableness of its expense claims for Contract Labor and Legal Expenses, among other costs items, and how PWI will be irreparably harmed if its Proposed Temporary Rates are not approved.

Second, the Consumer Advocate asserts that PWI has not demonstrated that there will be a sudden deficiency in revenues that are not subject to recovery. In contrast, the Consumer Advocate states that PWI should realize additional revenues through fixed customer charges, since PWI serves twenty (20) additional customers than when its Current Approved Rates were

¹¹See, Statement of Position at 7.

¹²Id.

established.¹³ The Consumer Advocate also contends that PWI should realize additional revenues due to recent sales of land lots in PWI's service area, further increasing PWI's customer count.¹⁴ Moreover, the Consumer Advocate contends that assuming that the Current Approved Rates are insufficient to recover a normalized level of operating costs, PWI has not demonstrated that it will be irreparably harmed due to a loss in revenues.

Finally, the Consumer Advocate states that PWI failed to demonstrate that it will be unable to obtain financing if it was needed from a third party. The Consumer Advocate states that PWI's financial statements indicate operating losses since the start of its operations in 1988. Upon careful review of PWI's income statements, the Consumer Advocate contends that the losses were primarily attributable to recorded costs for legal fees and pump replacement reserve expense. The Consumer Advocate contends that "[i]f one removes the erroneous expense for the pump replacement reserve, and considers a reasonable level of costs, there is nothing in the record to explain why PWI would not be able to generate a profit and obtain financing, if needed, from third parties at reasonable rates."¹⁵ Moreover, the Consumer Advocate contends that PWI failed to demonstrate the urgency for the additional funds.

¹³The Consumer Advocate states that PWI's Current Approved Rates were established in D&O No. 19980 based on a customer count of sixty (60) and surmises that PWI now appears to have a customer count of eighty (80). See, Statement of Position at 10.

¹⁴See, Statement of Position at 13 and 14.

¹⁵See, Statement of Position at 16.

C.

Findings and Conclusions

HRS § 269-16(c), states, in relevant part, that

The commission may in its discretion and after public hearing, upon showing by a public utility of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall by order require the public utility to return in the form of an adjustment to rates, fares, or charges to be billed in the future any amounts, with interest at a rate equal to the rate of return on such public utility's rate base found to be reasonable by the commission, received by reason of such continued operation which are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission.

In clarifying what is "probable entitlement" under HRS § 269-16(c), the commission stated that "only a reasonable probability or likelihood of entitlement to a permanent rate increase is necessary to be shown."¹⁶ With regards to "financial need" under HRS § 269-16(c), the commission clarified that:

[F]or a temporary rate increase to be allowed [under HRS § 269-16(c)], there must be more than a showing of revenue deficiency, revenue loss, or inability to earn the authorized rate of return. The relief of a temporary rate increase is available on an emergency basis to meet a sudden and urgent financial need. There must be a showing of irreparable harm resulting to the utility from a distinctive and sudden deficiency in revenue which is not subject to recovery.¹⁷

Upon review of the record, the commission finds that PWI has failed to meet the requirements of HRS § 269-16(c) and HAR

¹⁶See, *In re East Honolulu Community Services, Inc.*, Docket No. 6399, Decision and Order No. 10850 (November 16, 1990) ("D&O No. 10850") at 8.

¹⁷See, D&O No. 10850 at 14-15.

§ 6-61-89. We agree with the Consumer Advocate's arguments. In particular, PWI failed to demonstrate, to the commission's satisfaction, "probable entitlement" for the Proposed Temporary Rates. The Current Approved Rates were established in January 22, 2003 through the issuance of D&O No. 19980. In that decision and order, the commission, upon evaluation of the record established in Docket No. 00-0005, determined that the Current Approved Rates were just and reasonable.¹⁸ Within approximately nine (9) months after the issuance of D&O No. 19980, PWI initially filed its rate increase application in this docket, which it later amended in January 26, 2004, through the filing of its Amended Application. Upon review of the record as of the date of this order, PWI has not convinced us that there is a reasonable probability of a permanent rate increase, as set forth in the Amended Application.

PWI also failed to demonstrate "financial need" for the Proposed Temporary Rates. PWI's Temporary Rate Increase Request does not appear to be predicated on a "sudden and urgent financial need". PWI makes no such claims nor did it provide any credible evidence that PWI will be irreparably harmed by the "distinctive and sudden deficiency in revenues which is not subject to recovery".

PWI has experienced operational losses since the inception of the company.¹⁹ It filed for bankruptcy protection on May 7, 2003, since PWI's president, F. Newell Bohnett, decided that

¹⁸See, D&O No. 19980 at 9.

¹⁹See, Temporary Application, Exhibit PWI-10 at 4.

PWI was unable to generate sufficient revenues under the Current Approved Rates to cover its operational costs.²⁰ Accordingly, PWI's "revenue deficiencies" which appears to have led to PWI's bankruptcy filing is a long standing issue that cannot be perceived as a "sudden and urgent financial need."

Based on the foregoing, the commission concludes that PWI's Temporary Rate Increase Request should be denied.²¹

III.

Waiver Request

PWI requests that the commission waive the HRS § 269-16(c) and HAR § 6-61-88 requirements for a public hearing regarding its Temporary Rate Increase Request. PWI states that its Waiver Request is "due to the delay and financial hardship that a public hearing would impose on Applicant."²² PWI also contends that: (1) it is currently operating at a loss and that any public hearing will add to its operational losses; and (2) the burdens of

²⁰See, Temporary Application, Exhibit PWI-10 at 1 and 4.

²¹We note that the evidentiary hearing on PWI's Amended Application is scheduled on September 23, 2004, pursuant to Prehearing Order No. 21333, filed on September 3, 2004 ("Prehearing Order"). Under the Prehearing Order, the parties are required to file simultaneous briefs and rebuttal briefs on October 11 and 14, 2004, respectively. Thereafter, the commission will "make every effort to complete its deliberations and issue its decision" on PWI's Amended Application by October 25, 2004, pursuant to the requirements of HRS § 269-16(d). The conditions of the Prehearing Order are subject to change upon, among other things, a stipulation of the parties and commission approval of the stipulation.

²²See, Temporary Application at 4.

a public hearing is not justified due to its limited customer base and total revenues.

The Consumer Advocate opposes PWI's Waiver Request. It argues that a public hearing regarding a temporary rate increase is "crucial" for this proceeding since there is "almost universal opposition by customers to the same rate increase amount requested" in the Amended Application during the Public Hearing.²³

As stated previously, the Proposed Temporary Rates are identical to PWI's proposed rate increase requested in its Amended Application,²⁴ and the commission had already held a public hearing regarding PWI's Amended Application. Furthermore, the commission, by this order, will not grant PWI's Temporary Rate Increase Request. In light of the foregoing, the commission finds Applicant's Waiver Request to be moot, and concludes that Applicant's Waiver Request should be dismissed as moot.

IV.

Orders

THE COMMISSION ORDERS:

1. PWI's Temporary Rate Increase Request is denied.
2. PWI's Waiver Request is dismissed as moot.

²³See, Statement of Position at 17.

²⁴See, Temporary Application at 1.

DONE at Honolulu, Hawaii SEP 17 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Ji Sook Kim
Ji Sook Kim
Commission Counsel

03-0369.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21354 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: SEP 17 2004


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